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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (Seventh Notice of Proposed Rulemaking)	)	MM Docket No. 92-266

To: The Commission

COMMENTS OF LIFETIME TELEVISION

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SUMMARY

Lifetime Television ("Lifetime") urges the Commission to retain, if not significantly enhance, the current minimal 7.5% incentive for license fee increases. Especially since the Commission has greatly enhanced its originally proposed 7.5% incentive for the addition of new channels to a 20-cent mark-up, it should at the least maintain an incentive for operators to support the programming investments made by existing services. Lifetime has consistently urged the FCC to encourage cable operator programming investments in a neutral fashion so that operators base carriage decisions on program quality and audience demand, rather than on the financial impact of regulation. The agency should thus retain, and in fact enhance, the 7.5% programming investment incentive on license fee increases for the following reasons:

- By eliminating operators' minimal incentive to support license fee increases for existing program services, the Commission would exacerbate the already tremendous disparity in incentives for adding new program services (i.e., the 20-cent mark-up) versus supporting existing services.

- Even viewed in isolation, the 7.5% mark-up on increased license fee support is modest to a fault, providing far less than 1 cent to support license fee increases sought by existing program services such as Lifetime. Independent programmers already face downward pressure on their fees resulting from the increasing consolidation of cable ownership.

- With operators resisting increased license fee support generally, existing program services denied even the meager 7.5% incentive would have extreme difficulty maintaining (much less improving) their program quality. The resulting drop in audience size and advertising revenue will undercut existing services' ability to compete and, in turn, will erode the quality of programming available to the viewing public.

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COMMENTS OF LIFETIME TELEVISION

Lifetime Television ("Lifetime") hereby submits comments in response to the Commission's Seventh Notice of Proposed Rulemaking,[1] which -- even as it provides a greatly enhanced mark-up for channel additions -- questions the necessity of providing cable operators any financial incentive to support increased license fees for already carried program services. The Notice's proposal to eliminate the 7.5% mark-up for license fee increases would exacerbate the existing disparity in regulatory incentives and create a downward spiral in the ability of existing services to fund new programming -- just as the 20-cent mark-up is fueling the launch of new services and thus heating up the already intensely competitive battle for viewers.

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[1] Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, FCC 94-286 (released November 18, 1994) ("Notice" or "Fifth Order").

I. ELIMINATING THE MEAGER 7.5% MARK-UP ON LICENSE FEE INCREASES WOULD EXACERBATE THE CURRENT DISPARITY BETWEEN THE COMMISSION'S TREATMENT OF EXISTING SERVICES AND ITS 20-CENT REWARD FOR ADDING NEW SERVICES, PLACING EXISTING SERVICES AT A SERIOUS DISADVANTAGE IN GAINING SUPPORT FOR NEW PROGRAMMING INVESTMENT

The Commission has clearly demonstrated its understanding that operator investment in new and improved cable program material serves the public interest and should be encouraged with meaningful incentives. However, it has only selectively applied its understanding: its treatment of newly added program services certainly reflects it, while the Commission's current -- not to mention its proposed -- treatment of already carried services clearly does not.

To the benefit of new services, the Commission responded to the call of Lifetime and others for an enhanced mark-up on channel additions that would not favor one programmer over another.[2] The flat 20-cent mark-up represents a much more substantial and much more even-handed incentive to invest in new program services -- notwithstanding the upward pressure on subscriber rates it likely creates.

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[2] See Comments of Lifetime Television, MM Docket No. 92-266 (filed June 29, 1994); Reply Comments of Lifetime Television, MM Docket No. 92-266 (filed July 29, 1994) ("Lifetime Reply Comments"); Permitted Ex Parte Letter of Nancy R. Alpert, Vice President, Lifetime Television, to Meredith J. Jones, Chief, Cable Services Bureau (filed October 13, 1994). Lifetime and other programmers argued that the FCC's initial mark-up approach both generally failed to provide adequate incentives and inadvertently favored higher-priced program services over low-fee services. See Fifth Order at 9-11, ¶¶ 22-28.

Programming quality, however, requires money whether a program service is new to a given cable system or not. For the same reason that cable operators need a direct financial incentive to provide support for such new services, they need a corresponding incentive to do so for services they already carry.[3]

It is thus a marked departure from its prevailing policy for the Commission to suddenly propose eliminating what little incentive the rules have afforded an operator to support existing services.[4] While originally applicable to new and existing services alike, the 7.5% mark-up still governing existing services has been further undercut by the significantly sweetened incentive to add new channels. Adding a new service to the cable programming service tier

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[3] The Commission has previously concluded that the promise of increased penetration is insufficient to encourage operators to add services to their channel line-ups. Cf. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, 9 FCC Rcd. 4119, 4237 (1994) (further incentive needed so that cable industry may "grow and provide new and additional services to subscribers"). So, too, the potential for increased penetration is not enough to win operator support for fee increases sought by existing services.

[4] Lifetime has suggested that the Commission should instead enhance the incentive for supporting existing services by providing a mark-up on license fee increases that (1) is based on the "average embedded margin" proposals already in the record, (2) allows for a minimum flat mark-up of several cents, and (3) falls under a separate cap. See Lifetime Reply Comments at 6-8, citing Comments of Viacom International Inc., MM Docket 92-266, at 8-9 (filed June 29, 1994).

("CPST") can now earn an operator 20 cents profit per subscriber, even if that service charges no license fee. Paying increased license fees to an existing program service using the meager 7.5% mark-up, on the other hand, would not even return to the operator a full penny per subscriber unless the license fee rose more than 13 cents -- an amount far greater than the license fee increases sought by Lifetime or other typical basic cable program services.[5] The choice for operators is thus a skewed one, turning not on the merits of the programming at stake.

The 7.5% mark-up gives operators some reason, albeit minimal, to agree to increased license fee support. Abolishing even this de minimis incentive to support the maintenance and improvement of programming offered by existing services would, as demonstrated below, undermine the ability of these services to compete effectively for viewers in today's increasingly crowded programming marketplace. While new services would indeed be "going forward," existing services would instead be "going backward."

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[5] Typically, annual license fee increases for these programmers range from 1 cent per subscriber to a high of 5 cents per subscriber. Consequently, the meager 7.5% mark-up applied to even the highest typical license fee increase would result in far less than a half-penny per subscriber.

II. ENCOURAGING OPERATORS TO SUPPORT INVESTMENT IN EXISTING SERVICES' PROGRAMMING IS AT LEAST AS NECESSARY AND DESIRABLE AS ENCOURAGING OPERATORS TO ADD NEW CHANNELS

Lifetime has distinguished itself in the marketplace by investing substantially in original, high quality programming. While this may be costly, Lifetime performs a unique and valuable role by serving the needs of a particular audience segment -- women -- not targeted by others with high-quality, timely programming.[6] If the FCC rules hinder Lifetime's ability to successfully negotiate with operators for its customary and modest license fee increases, Lifetime's ability to serve its audience segment and preserve its programming offerings, much less improve upon them, will be seriously handicapped.

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[6] For several years, Lifetime has been the leader in providing cable operators with public awareness programs that connect to female subscribers. Lifetime's largest and most successful public service effort was its 1994 "Picture What Women Do" campaign, undertaken in partnership with nine national women's not-for-profit organizations representing more than 10 million women. As part of the campaign, Lifetime also produced and provided for its affiliates nine public service announcements made on behalf of these partner organizations. More than 700 cable systems throughout the country, with an estimated reach of 35 million households, participated. Lifetime's "Picture What Women Do" one-hour special, which aired last September, was nominated for a Cable Ace Award, the cable industry's most prestigious award. Lifetime Television was named the network of the year for 1994 by Women in Cable and Telecommunications, and Lifetime's President, Douglas A. McCormick, will receive one of four President's Awards from the Cable Television Public Affairs Association in March 1995.

A. If Operators Are Denied A 7.5% Mark-up, They Will Be Even More Reluctant To Accept License Fee Increases Critical To The Future Of Independent Program Services

At least a minimal operator mark-up is necessary if programmers are to have a reasonable prospect of obtaining needed levels of license fee support. Otherwise, the prospect of further erosion in operator profit margins will only make harder the already difficult task facing an independent programmer such as Lifetime in seeking such support from an increasingly consolidated cable industry.[7]

Oddly, the Commission's proposed elimination of the 7.5% mark-up appears to rest on the unstated assumption that program services have unilateral market power to impose license fee increases on operators.[8] Such is hardly the case. Indeed, as an independent cable network in which no cable operator holds an ownership interest, Lifetime does not enjoy the same favorable negotiating position and assured

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[7] Profit margins matter because they largely determine an operator's amenability to increased license fees.

[8] Indeed, this misconception of program services' bargaining power is not only inconsistent with the premise behind the 20-cent mark-up, but is also squarely contradicted by the FCC's carriage agreement rules -- mandated by Congress to prevent operators from using their leverage to extract unfair terms and conditions from program services. See 47 U.S.C. § 536 (1994); 47 C.F.R. §§ 1300-1302 (1994).

If anything, the Commission might expect that -- absent a mark-up -- operators would press for some other economic benefit in their negotiations with existing programmers.

carriage of a programmer affiliated with an operator. In Lifetime's experience, affiliate fee increases have always been the result of hard-fought, often protracted negotiations with cable operators. The process has become even more difficult since the inception of rate regulation. The recent and continuing flurry of MSO consolidations, moreover, only further weakens Lifetime's position in fee negotiations. Retaining, if not enhancing, the 7.5% mark-up is thus necessary to afford Lifetime and other such services a fair chance at the negotiating table.[9]

B. Programmers Cannot Sustain, Much Less Improve, Programming Quality Without License Fee Increases

License fee increases translate into new and improved, higher quality programming. Without license fee increases, existing program services like Lifetime will be thwarted in

[9] The Commission should have no concern -- especially in light of its support for the far-greater upward rate pressure created by the 20-cent mark-up -- that retention of a minimal incentive for operators to support license fee increases would undermine the agency's overall rate regulation scheme. As the Commission has already recognized, cable operators have clear "incentives to assure that service rates are not excessive since excessive programming costs, if passed on to subscribers, may cause them to lose subscribers." Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, 8 FCC Rcd. 5631, 5787-88 (1993) ("First Order"). Moreover, keeping incentives for operators that bolster the quality of CPST program services will serve the fundamental goal of keeping cable rates within competitive levels: an attractive, thriving CPST will compete with "new product tiers" and thus ensure that NPT rates remain low as well. See Fifth Order at 10-11, ¶¶ 24-25.

their efforts to stay competitive by expanding production and underwriting top creative talent.[10] Rather, this failure of support would render Lifetime unable to keep pace with rising programming costs, which would result in an erosion in the quantity and quality of original production.

It is well understood that program quality is the engine that drives a program service forward in the eyes of viewers and cable operators, particularly a low-fee, advertiser-supported service such as Lifetime. Popular programs attract more viewers, which in turn attract additional advertising revenue. This income, together with that derived from license fees, is pumped back into programming -- thus perpetuating the cycle. Meanwhile, production costs tend to rise at a pace much faster than inflation.[11] Consequently, a program service must increase its programming investments just to keep pace. Even more investment is needed to pull ahead of competing services.

Furthermore, programmers cannot rely simply on good word-of-mouth spurred by their quality programs to inform potential viewers about the existence of the service. Now

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[10] The schedule of a "new" program service may, in fact, contain relatively little innovative, original programming, while an established service may use increased license fee support to underwrite a considerable amount of original programming.

[11] The Commission has explicitly recognized this fact. See First Order at 5787.

that long-delayed new program services are finally beginning to debut, existing services will also have to devote more revenue to marketing efforts in order to cut through the burgeoning "clutter" of voices competing for viewers' attention.

Lifetime has chosen to tackle these financial realities in order to bring new, high-quality original programming to the female audience it serves, as well as to increase its public affairs commitment to women.[12] Its total programming investment has grown more than tenfold since 1984. Just since 1990, Lifetime has increased its programming investment by more than 100%; it now ranks seventh among all basic cable

[12] This commitment has resulted in programming that has earned more than 200 awards and award nominations since Lifetime's inception. The network's program schedule contains information-rich programs on matters such as parenting; cooking and nutrition; home repair, maintenance, and decorating; and public affairs. Lifetime also televises original movies, a daily live women's entertainment program, and special presentations such as "Rocking the Boat," an exclusive documentary featuring the first all-women's U.S. sailing team competing for the America's Cup. Lifetime also conducts public service campaigns that focus on women. Last October, for example, Lifetime devoted a full day of programming dedicated to breast cancer awareness. Fran Visco, President of the National Breast Cancer Coalition, was quoted as saying, "We applaud Lifetime for their one-of-a-kind dedication to all issues concerning women." Consistent with its commitment to women's issues, Lifetime will soon announce a new regularly-scheduled public affairs program, and Lifetime already provides the only forum for women's opinion and commentary through its "Perspectives on Lifetime" segments.

services as determined by level of programming expenditure.[13] Absent needed operator support, however, this volume of quality programming cannot be sustained.

CONCLUSION

Lifetime urges that the Commission retain, if not significantly enhance, the 7.5% mark-up on license fee increases for already-carried program services in order to encourage cable operator programming investments in a neutral fashion. Loss of this incentive would effectively undercut existing services' ability to obtain such needed support from operators -- with a consequent loss of programming quality for the viewing public.

Respectfully submitted,

LIFETIME TELEVISION

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January 13, 1995

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[13] Paul Kagan Associates, Inc., Economics of Basic Cable Networks (1994).

CERTIFICATE OF SERVICE

I, Rosemary C. Harold, certify that the original and five copies of the foregoing "COMMENTS OF LIFETIME TELEVISION" were served via hand-delivery on this 13th day of January, 1995, to the following:

William F. Caton
Acting Secretary
Federal Communications Commission
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Rosemary C. Harold
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